In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:

ALEXANDER CELESTIN, JR.
(Chapter 7 Case 94-41608)

Debtor

ALEXANDER CELESTIN, JR.

Plaintiff

v.

UNITED STATES DEPARTMENT
OF HEALTH & HUMAN SERVICES

Defendant

Adversary Proceeding

Number 94-4135

FILED
at 2 O'clock & 55 min P M
Date 9-5-95
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

On November 23, 1994, Alexander Celestin, Jr. ("Debtor"), initiated the instant adversary proceeding seeking a determination that a loan he received under the Health Education Assistance Loans ("HEAL") program is a dischargeable debt in his Chapter 7 bankruptcy case presently pending in this Court. Defendant, the United

States of America, by and through its agency, the Department of Health and Human Services, timely filed an answer denying the debt's dischargeability, and the matter was tried in Savannah, Georgia, on May 31, 1995. Based upon the Findings of Fact and Conclusions of Law set forth below in accordance with Bankruptcy Rule 7052, this Court finds that the loan is dischargeable and that Debtor is entitled to judgment.

FINDINGS OF FACT

The HEAL program was established by The Health Professions Educational Assistance Act of 1976 (Pub.L. 94-484) and is presently codified at 42 U.S.C. §292, et seq. The statute was amended by the Health Professions Education Extension Amendments of 1992, Pub.L. 102-408, October 13, 1992, and by Section 2014 of the National Institutes of Health Revitalization Act, Pub.L. 103-43, June 10, 1993. The program was first implemented in fiscal year 1978 and is patterned after the Guaranteed Student Loan ("GSL") program.

The HEAL program is a federally insured loan program that uses private lending institutions for loans to students in the health professions schools. The program was enacted to meet the needs of health profession students who were required to borrow substantially more than the borrowing limit under the GSL program. HEAL loans are available to full-time graduate students in schools of

medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, and chiropractic or graduate programs in health administration or clinical psychology. The HEAL program, which is administered by the Public Health Service of the United States Department of Health and Human Services ("HHS"), uses a tri-party arrangement; the private lenders make the loans, the schools administer application and disbursement, and HHS guarantees the loans. The lender must pay to HHS an insurance premium of eight percent (8%) of the loan, which is passed on to the borrower through a deduction in the loan amount. The premium is deposited in the Student Loan Insurance Fund ("SLIF") which HHS administers and uses to pay insurance claims.

Upon the borrower's graduation or departure from school, the lender establishes a repayment schedule which is implemented after a nine or ten-month grace period. The borrower has up to thirty-three years, excluding any deferment or forbearance period, in which to repay the loan. Lenders are required to carry out numerous due diligence procedures in collection, including use of collection agents and reporting delinquency to credit bureaus. Generally, lenders are required to obtain a judgment against the borrower before filing a default claim with HHS. When a lender has complied with the terms of the HEAL insurance contract, the statute and the regulations; HHS will pay one hundred percent of the lender's loss in principal and

interest upon the default, bankruptcy, death or permanent and total disability of a borrower. Upon payment of a claim, HHS receives an assignment of the promissory note or judgment on the borrower and becomes the borrower's direct creditor.

Debtor attended the New York College of Osteopathic Medicine between 1983 and the spring semester of 1987. To finance his medical education, Debtor borrowed $67,645.00, which indebtedness is evidenced by a series of eight promissory notes to the Baybank Norfolk County Trust Company in Dedham, Massachusetts:

Date of Loan	Principal Amount of Loan
09-26-83	$5,645.00
04-06-84	$5,000.00
08-17-84	$9,000.00
04-17-85	$8,000.00
09-13-85	$11,000.00
01-05-86	$10,000.00
05-25-86	$9,000.00
04-03-87	$10,000.00
TOTAL	$67,645.00

Debtor defaulted on his repayment obligations and on March 27, 1989, the Student Loan Marketing Association obtained a judgment in the Supreme Court of Queens County, New York, in the principal amount of $80,211.52, which included accrued interest up to the date of judgment. The judgment was later assigned to the United States of America on September 4, 1990. When the United States Attorney for the Southern District of Georgia attempted to enforce the judgment, Debtor sought the protection of this Court and filed this adversary proceeding challenging the nondischargeability of the HEAL loans made to him. Debtor acknowledges the debt owed to the United States and does not dispute that the balance owed on the date of trial was $124,600.64, including principal and accrued post-judgment interest.

Debtor is a thirty-three year old man who was raised in New York. Debtor received, prior to attending medical school, a Bachelor of Science degree in biology from Lemoyne College. Debtor is married and has two daughters. His family members are all in good health. Debtor is currently employed by a local car dealership as a salesman. He has been working at this particular dealership for approximately one month, having changed employment at least twice in recent months in an attempt to increase his income. Debtor's wife is trained as a medical transcriptionist, but has been unable to find work in her chosen field. She is, however, temporarily employed at a minimum wage job and is actively seeking permanent

employment.

Debtor's gross income as reflected in his federal income tax return shows that he earned $12,292.17 in 1991, $19,069.58 in 1992, $22,263.91 in 1993, and $18,328.44 in 1994. Through the first five months of 1995 he has earned approximately $6,900.00 from his employment as a car salesman.

During his tenure at the New York College of Osteopathy, Debtor suffered from controlled substance abuse which so affected his life that it apparently caused him to miss a portion of his third year of medical school. He became so emotionally distraught over these events that he was hospitalized for a period in 1987 to recover from substance abuse. Fortunately for Debtor, his rehabilitation was successful and, as best as this Court can determine, he appears to be suffering no serious physical or emotional effects from the ordeal.

After leaving medical school, Debtor spent four years with the United States Army, from April 1988 to April 1992, as an infantryman. While in the army Debtor inquired about the army's medical school but did not apply for admission. Nor did Debtor apply for admission to Officer Candidate School ("OCS") because of a facial skin condition which prevented him from being clean-shaven. Debtor testified

that he knew that he would not be admitted to OCS because he could not be consistently clean-shaven as required by army regulations. He did not seek a waiver of the regulation for medical reasons.

Debtor does not believe that he is employable with a bachelor's degree in biology; however, he offered no evidence that he had tried to find employment in a field related to his degree. Nevertheless, the Court is well aware that there is no plethora of high paying jobs for graduates of similar background. He has had one interview with a pharmaceutical company, but was not offered a job because, in his opinion, the company was concerned that he would return to medical school while employed there. Debtor's history of drug use is a likely impediment to this type of work as well.

CONCLUSIONS OF LAW

The dischargeability of a HEAL loan is governed by 42 U.S.C. Section 292(f)(g), and implementing regulations of 42 C.F.R. Part 60, rather than Section 523(a)(8) of the Bankruptcy Code. United States v. Wood, 925 F.2d 1580, 1583 (7th Cir. 1991); In re Hines, 63 B.R. 731, 734 (Bankr. D.S.D. 1986). Section 292f(g), in relevant part, proves:

> A debt which is loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of title 11, United States Code, only if such discharge is granted--
>
> (1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;
>
> (2) upon a finding by the bankruptcy court that the nondischargeability of such debt would be *unconscionable*; and
>
> (3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) to the borrower and the discharged debt.[1] (Emphasis added).

42 U.S.C. §292f(g). It is apparent from the language of the statute that Congress intended HEAL loans to be immune from discharge except in extreme cases of hardship. Subsection 292f(g)(1) imposes an absolute prohibition against discharge of a HEAL loan for the first seven-years after the date that payment under the loan become due. *See e.g.,* Id. at 1582; In re Quinn, 102 B.R. 865, 867 (Bankr. M.D.Fla. 1989). Once outside of this seven year period, subsection 292f(g)(2) requires, as a pre-condition to discharge, the bankruptcy court to find that excepting the debt from

[1] Subsection (f) authorizes the reduction of federal payments for health services to borrowers who are practicing their professions and who have defaulted on this HEAL loan to offset the amount of the debt.

discharge would be "unconscionable." *See e.g.*, Hines, 63 B.R. at 735.

There is no dispute in this proceeding that more than seven years have passed since Debtor's payments under his HEAL loans first became due, thereby satisfying the requirement of subsection 292f(g)(1). Thus, the remaining issue is whether excepting Debtor's loan from his Chapter 7 discharge would be unconscionable.

Unconscionable is undefined in the statute, but it clearly imposes a higher standard upon a debtor than the "undue hardship" standard of Section 523(a)(8) of the Bankruptcy Code. *See e.g.*, Wood, 925 F.2d at 1583; In re Green, 82 B.R. 955, 959 (Bankr. N.D.Ill. 1988). Courts attempting to give definition to the term have noted that unconscionable in other contexts denotes a situation "monstrously harsh and shocking to the conscience," Hines, 63 B.R. at 736, "'lying outside the limits of what is reasonable or acceptable,' or 'shockingly unfair, harsh, or unjust'." Green, 82 B.R. at 959 (*quoting* Webster's Third New International Dictionary 2486 (3 ed. 1981)). As noted by the court in Hines, however, it is a term difficult to define with any precision in the bankruptcy setting:

> In a bankruptcy context . . . what is unconscionable

> defies precise definition and is better left to the discretion of the bankruptcy judge - unconscionability is likened to a beauty in that it appeals to the senses and is found in the eyes of the beholder.

Hines, 63 B.R. at 736. What is clear is that a court should examine the totality of a debtor's circumstances, including the debtor's income, potential earning ability, health, educational background, dependents, age, accumulated wealth, and professional degree. *See e.g.*, Kline v. United States, 155 B.R. 762, 766 (Bankr. W.D.Mo. 1993); In re Emnett, 127 B.R. 599, 602-03 (Bankr. E.D.Ky. 1991); In re Quinn, 102 B.R. 865, 867 (Bankr. M.D.Fla. 1989).

Upon consideration of the totality of the circumstances I find that Debtor has met his burden in this case. This Court does not lightly rule that student loan debts are dischargeable in light of the clear public policy disfavoring such discharges as expressed in 11 U.S.C. Section 523(a)(8) and 42 U.S.C. Section 292(f)(g)(2). Here, Debtor borrowed substantial sums of money to attend osteopathic medical school, a course of study which promised a substantial level of income. For unknown reasons Debtor succumbed, as is all too common, to drug abuse and left medical school as a result. Since that time, he has been rehabilitated, served in the military for four years, and has been gainfully employed as a civilian for several years

since. However, he has not returned to medical school, and in the absence of proof that at this late date he could still do so, I must conclude that he will not in the future. Despite an undergraduate degree in biology, Debtor's income since leaving medical school has been unremarkable. His budget filed in this case shows no disposable income after providing for bare necessities. He has dependents to support, no accumulated wealth and without a professional degree, has no likelihood of any substantial increase. Moreover, because of the high debt involved virtually all of his after tax income would be required merely to pay the accruing interest on his loans.[2]

Given these facts, while I remain as incapable of defining unconscionability with precision any better than other judges who have dealt with this issue, I conclude that to deny Debtor a discharge would be unconscionable. Debtor cannot service this debt - to do so would consume his entire income and deprive his family of all necessities. He has no potential for fundamentally improving his lot in life. Indeed, he has apparently maximized his productivity following his bout with drug abuse. He is to be commended for becoming rehabilitated to this extent, and although his comeback leaves him short of his original professional potential, it should not obscure the fact that he most likely has reached the pinnacle of his earnings capacity. To deny discharge of this mammoth debt would constitute a financial life sentence.

[2] Interest on the judgment accrues at a rate of 9.43 per cent or approximately $11,000 annually.

Despite the high standard which Congress rightfully has set for the discharge of these types of loans, the promise of a "fresh start" of Title 11 is not a meaningless one for student borrowers. While the exception is narrow, Debtor qualifies.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt of ALEXANDER CELESTIN, JR., to the UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES, is dischargeable.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 1st day of September, 1995.